
DRAKE UNIVERSITY LAW SCHOOL COMMENCEMENT ADDRESS

*Honorable Mark S. Cady**

Roscoe Pound once wrote, “The law is experience, [applied continually to further experience].”¹ Plato, centuries earlier, argued that the law is unrivaled in its ability to teach.² Both were right. The law uniquely reflects our experiences in life and reveals the history of our successes and mistakes. We can learn from both.

Iowa has a rich history of remarkable court decisions wherein abundant lessons for all of us can be found. These cases have been pieced together to become the mosaic of the collective story of our struggles, successes, courage, hope, disappointment, and the life that is ours. New lawyers should not only seek to understand this history, but to understand how it, and our profession, have helped shape the arc of justice that points to our future.

In 1868, in a case called *Clark v. Board of Directors*, the Iowa Supreme Court, in an opinion written by Justice Chester Cole (a founder of this law school),³ declared public schools in this state under our constitution must be integrated.⁴ This was eighty-six years before the U.S. Supreme Court decided the issue for the nation.⁵ In 1873, more than eighty years before Rosa Parks refused to retreat to the back of the bus in Montgomery, Alabama, the Iowa Supreme Court declared our constitution prohibited racial discrimination in public accommodations.⁶ Iowa was also the first state in the history of the country to admit a woman into the practice of law,⁷ at a time well before the rest of the nation began to

* Chief Justice, Iowa Supreme Court. J.D., Drake University Law School, 1978. Chief Justice Cady delivered the following remarks as part of his commencement address to the Drake University Law School 2013 graduates on May 18, 2013.

1. See Roscoe Pound, *The Case for Law*, 1 VAL. U. L. REV. 201, 202 (1967) (“[T]he law . . . is experience developed by reason and reason tested by experience.”).

2. See PLATO, APOLOGY 33–35 (Benjamin Jowett trans., Floating Press 2011) (arguing that the law and all those knowledgeable in the law are the best instructors and improvers of the youth).

3. See *Chester C. Cole (1864 – 1876)*, IOWA JUD. BRANCH, <http://www.iowacourts.gov/wfdata/frame1773-1463/pressrel15.asp> (last visited Aug. 26, 2013).

4. *Clark v. Bd. of Dirs.*, 24 Iowa 266, 277 (1868).

5. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

6. *Coger v. N.W. Union Packet Co.*, 37 Iowa 145, 153–55 (1873).

7. Tom Longden, *Arabella Mansfield*, DES MOINES REG., <http://data.desmoinesregister.com/dmr/famous-iowans/arabella-mansfield> (last visited

follow.⁸ But there is another case from our history that was never appealed and reported in our law books, which is deserving of recognition tonight, with hopes that it will be of help to you in writing your untold story.

It is perhaps fitting this story is not as celebrated as those memorialized in our books and even etched into monuments because, as in life, what we leave behind is not what is engraved in stone. It is what we weave into the lives of others. This story provides an important strand for all of us.

While our court cases have mostly told a proud history, some of our early legislation did not. In the years leading up to Iowa statehood, the legislature enacted a statute that prohibited African-Americans from moving into Iowa.⁹ The law was mostly ignored, however, until the Emancipation Proclamation signed by President Abraham Lincoln on January 1, 1863, freed more than three million slaves.¹⁰ This action renewed public cries for the statute to be enforced, which resulted in the arrest and deportation trial of an African-American laborer in Des Moines named Archie P. Webb.¹¹ Mr. Webb had moved to Iowa from Arkansas two years earlier.¹²

Mr. Webb's trial was as celebrated as could be at the time—the State of Iowa was seeking to remove him from the state as a message to newly freed slaves that they were not welcome. The courtroom was packed, and the press followed each word of the proceedings.¹³ It was a very tenuous time in our country. We were divided by a civil war, and the trial followed

Aug. 26, 2013); *see also* Gartner v. Iowa Dep't of Pub. Health, 830 N.W.2d 335, 349 (Iowa 2013) (providing Ms. Mansfield as an example of Iowa's longstanding commitment to gender-neutral statutory interpretation).

8. *See, e.g.,* Bradwell v. Illinois, 83 U.S. 130, 140–41 (1872) (Bradley, J., concurring) (agreeing with the Court's decision to deny a woman admission to the Illinois bar because the right to engage in any profession unquestionably did not extend to women); *see also* Gina M. Messamer, Note, *Iowa's All-Male Supreme Court*, 98 IOWA L. REV. 421, 423 (2012) (noting that Ms. Mansfield's acceptance to the bar was "a very progressive notion at the time").

9. 1839 Iowa Acts 69–70. This was followed by a similar law once Iowa became a state. 1850 Iowa Acts 172–73.

10. *See Emancipation Proclamation*, NAT'L ARCHIVES, <http://www.archives.gov/historical-docs/document.html?doc=8&title.raw=Emancipation%20Proclamation> (last visited Aug. 26, 2013).

11. *See* Nathan E. Coffin, *The Case of Archie P. Webb, a Free Negro*, 11 ANNALS OF IOWA 3D 200, 201 (1913).

12. *Id.* at 204.

13. *See id.* at 205, 213–14.

the infamous *Dred Scott*¹⁴ decision by the U.S. Supreme Court by only six years.

Mr. Webb was represented by a lawyer named Steven Sibley.¹⁵ The trial judge was John Henry Gray of Des Moines.¹⁶ Both names have been obscured by the passage of time, at least without an occasion like this. But both lawyers did what all lawyers are to do when called by the time in which they live.

Judge Gray clearly understood the circumstances he faced. The public interest in the case was intense, and the importance of the issue was evident.¹⁷ He wrote that the case was “rendered complex by precedence of great authority on both sides, and urged at a time when the nation struggles as if in the agonies of death, and when the horrors of civil war” were a constant reminder of our unfortunate struggles in accepting the differences in people.¹⁸ In response, he acknowledged the case presented no easy task, yet he understood the strengths of the process that would guide the decision.¹⁹ He emphasized the court would provide a “patient hearing” and “indulge in no evasion nor admit of any equivocation.”²⁰

The trial concluded with a ruling that declared Iowa’s statute unconstitutional.²¹ The judge held that the right to life, liberty, safety, and happiness guaranteed to all could not be sustained for all under a law that banished some from the state.²² The *Chicago Tribune* reported the reading of the decision was met with “breathless attention.”²³ The *Burlington Hawk-Eye* wrote that Judge Gray honored all Iowans that day, and that the people of Iowa would always thank him “for vindicating the charter of their liberties, and throwing the shield of the law over the weak and helpless [H]e gave a verdict that will be sustained by the highest legal tribunals of the Country and the chancery of Heaven.”²⁴ The decision has indeed been sustained by all accounts, including, I suspect, the “chancery

14. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

15. Coffin, *supra* note 11, at 202.

16. *Id.* at 200–01. Coffin’s article includes the complete text of Judge Gray’s opinion as published in the *Iowa State Register*. *Id.* at 204–13.

17. *See id.* at 205.

18. *Id.* at 207 (quoting Judge Gray’s opinion).

19. *Id.* at 207–08.

20. *Id.* at 205 (quoting Judge Gray’s opinion).

21. *Id.* at 211–13.

22. *Id.* at 211.

23. *Id.* at 213–14.

24. *Id.* at 214.

of Heaven.” Tonight, we can thank Judge Gray for honoring our state, our profession, and for giving us a story fitting for the memory of this evening and the beginning of your careers.

We should always strive to act first with the courage of our convictions as a people and to do what is right, even during those times it might not be easy to do. It is at that time when you may very well be doing your best and most important, enduring work. Remember, as well, that what is popular at any given time is not always right and should not always guide your decisions.

While the names of Judge Gray and lawyer Sibley have faded from history, I can report to you, with some regret, that many of the people who supported and pushed for the Mr. Webb’s deportation were lawyers too—some who lived on to become monumental names in Iowa’s history, such as Jefferson Scott Polk and Phineas Casady.²⁵

A law degree will add credibility to a voice, but it does not make the voice right, nor ensure success. Conversely, doing what is right does not ensure a place in history. Yet it is far better for history to judge you were right, than for you to acknowledge with regret later in life that you were wrong.

The solution to improving your vision and to avoid mistakes, I believe, was identified by the famous jurist, Learned Hand, in a speech delivered in 1944 during a critical juncture of World War II.²⁶ In speaking of the venerable spirit of liberty found in the hearts of all Americans, he observed that this spirit is best served when it is not too sure it is right, when it seeks to understand what is in the minds of others, and when it weighs the interests of others without bias.²⁷

I think this admonition to Americans then holds promise for us today and for you in your future. We need to become a more contemplative state, a more contemplative nation. We need to search for the truth even when we feel mostly confident it has already been found. If we can all be a bit less sure we are right at times, our eyes can be opened sooner to the truth when we are wrong. Never forget that we are all a part of society and bear responsibility for the society that we create.

25. *Id.* at 204.

26. *See* LEARNED HAND, *The Spirit of Liberty* (May 21, 1944), *in* THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND 189, 189–91 (3d ed. 1960).

27. *Id.* at 190.

Most lawyers will likely never find themselves with an opportunity to vindicate the character of our liberty in the profound way Judge Gray and Steven Sibley did in 1863. But each of you each day will have an opportunity to sustain others and to promote the character of our liberty in the work you do and the way you treat others. You will serve yourself the best by serving others.

Don't wait for some event to occur to offer a hand in help or to express compassion; don't wait for some case like the one presented to Judge Gray before "throwing the shield of the law over the weak and the helpless."²⁸ It is common and admirable for people to respond to tragedy with a helping hand, but when you do it without a reason or without some event, you shape others just the same, only much more often. Be a hero to others in ways that you will never know, and begin now. Today, for example, tens of thousands of Iowans are in need of legal representation, but cannot afford it²⁹—like Archie Webb, they are some of the weak and the helpless. You can throw your shield over them by volunteering your legal services each year of your practice, consistent with the aspirational goals of our profession. Through your life, your voice, and your actions, you will become a critical part of the important progression of not only who we are as a society, but who we will become.

28. See Coffin, *supra* note 11, at 214 (quoting an unnamed article published in the *Burlington Hawk-Eye*).

29. See Dennis Groenenboom, *Justice in the Balance: Low-Income Iowans and the Courts*, 34 EQUAL JUST. J., no. 1, 2013, at 1, 1, available at <http://www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/5A5D59DD-43B8-44DF-872A-77F50A9BC53C/1st-quarter-2013-clr-w2.pdf> (noting Iowa Legal Aid assisted over 46,000 low-income Iowans in 2012 and still had to turn away thousands more for lack of resources).